PART I

Haunted by Violence

HAMLET: Let us go in together,
And still your fingers on your lips, I pray.
The time is out of joint – O cursèd spite,
That ever I was born to set it right!
Nay, come, let's go together.
(*Hamlet* Act 1, Scene 5, 186–190)

The present is 'out of joint' because it fuses and incorporates elements of the past and the future, because it is always haunted by ghosts or *revenants* . . . Hamlet's enigmatic saying that time is 'out of joint' . . . [is] primarily [an] ethical statement. (Bevernage 2012: 142 & 143)

Prologue
A Time of Violence

On 29 December 2007 the friends I was staying with in Nairobi phoned from Kakamega in Western Kenya: they did not know how to get home. They had begun the day's drive back, but supporters of the principal opposition party, the Orange Democratic Movement (ODM), had blocked the road with stones and branches. My friends had decided to turn back after they saw one gang drag passengers out of a *matatu*,[1] demand to see their identity cards and then begin to beat a man whose name must have suggested that he hailed from the 'wrong' ethnic group. In the background they could see a fire with what looked like a man's legs sticking out of the flames.

As I waited for news from my friends, and for the final results from the presidential and parliamentary elections of 27 December, frustration with delays began to provoke scenes like that witnessed by my hosts in pockets across the country, and friends from the opposition heartlands of the Rift Valley (where I had conducted research since 2004) began to call. One man from Eldoret complained of how large numbers of General Service Unit (GSU) personnel – infamous for their repression of opposition activity – were being stationed around the town. In his words, '[W]e're worried [the government's] going to steal the election: what else are the GSU doing here?'

Then, in the early evening of 30 December, the Electoral Commission of Kenya announced – in a closed-door meeting relayed through the state-owned Kenya Broadcasting Company – that the incumbent president, Mwai Kibaki of the Party of National Unity (PNU), had won the election by a little more than 200,000 votes. For a while I sat dumbfounded. The previous day, I had woken to news that the principal opposition candidate, Raila Odinga of ODM (who had enjoyed a marginal lead in pre-election opinion polls), was winning by almost a million votes. It looked like the government had just stolen the presidential election.

[1] The name for the ubiquitous private minibuses that ply Kenya's roads.

Within the hour, I was faced with another image televised live to the nation: President Kibaki was being re-inaugurated at State House as the sun went down and late arrivals shuffled around the periphery of the cameraman's gaze. My heart sank.

Almost immediately my friends returned – they had used their credit card to charter a plane back from Kakamega. Over the following days, weeks, months and years, I would hear similar stories of people who had escaped the violence that erupted after Kenya's 2007 election, and which ended with a power-sharing agreement on 28 February 2008. This includes an account by a Kalenjin politician who had campaigned on a PNU ticket in the north Rift Valley (and hence for a party that the majority of his ethnic kin opposed); he relayed how he was driven to Eldoret airport in the trunk of a friend's car in January 2008 so as to avoid angry co-ethnics who regarded him as a traitor to the community (interview, Eldoret, 2 September 2011). Or a Luo flower farm worker who recounted how, later that month, police officers saved him and his family from a gang of Kikuyu youth who had gathered in their Naivasha homestead wielding *pangas*[2] and jerry cans of petrol (interview, Naivasha, 17 December 2012), while an Indian businessman spoke of how police had escorted his family and others across the border from Nyanza into Uganda in early January 2008 (conversation, Nairobi, 5 July 2015).

Unfortunately, I heard many more stories of people who had not managed to escape: who neither had the money to charter a plane nor had benefited from the timely arrival of a brave friend or security personnel. Instead, I heard a litany of harrowing tales of physical violence, loss, destitution and ongoing suffering. A Kikuyu lady described how she was raped by two men in Eldoret town in January 2008 when she left the safety of an internally displaced person's camp to look for her brother's body after she heard that he had been killed by a gang of opposition supporters (interview, Nakuru, 8 March 2011). A Kikuyu man spoke of how his father was murdered by their neighbours and rued the ongoing impact of the patriarch's loss on his extended family (conversation, Molo, 2 August 2009). A Luo woman recalled how her husband had been decapitated during the violence in Nakuru and how, in her shock,

[2] A machete-like knife common to most households across the country.

she had wrapped his head in a *leso*[3] and carried it all the way back to Kisumu – almost 150 kilometres away – in a paper bag (TJRC women's hearing, Kisumu, 16 July 2011). A visibly disturbed Luo man testified to the loss of eleven members of his immediate family when a mob set his house ablaze in Naivasha (TJRC public hearings, Kisumu, 14 July 2011). A Kalenjin woman spoke of how her husband had been shot dead by police in January 2008, and of her ongoing struggles to educate their son (TJRC public hearings, Kericho, 21 September 2011). And a Kalenjin man recounted how his property had been destroyed and his family had been forced to flee after being denounced as traitors for supporting Kibaki's re-election bid, and how they had subsequently felt impelled to move from place to place under suspicion of being witnesses at the International Criminal Court (ICC; conversations between 7 August 2011 and 12 April 2015). In *none* of these cases had a perpetrator apologised or been brought to book, or any stolen or destroyed property been returned or replaced. And so the stories of violations and injustice go on.

Collectively these personal narratives, ongoing consequences and examples of impunity comprise some of the realities behind the nameless and conservative statistics: that within two months, more than 1,000 people died and almost 700,000 people were displaced during the post-election violence of 2007–8 (Kenya 2008b: 304; Lynch 2009: 604), with only a handful of low-level perpetrators convicted.

This book does not focus on the post-election violence, which I have discussed in earlier work (Lynch 2011b). Instead, it analyses two of the mechanisms introduced to try to address the violence and its underlying causes so as to confront these realities, assign them to history and facilitate a transition to a more democratic and peaceful Kenya: an international criminal trial and truth commission. Through these mechanisms, many sought to gain justice for the post-election violence, tackle its underlying drivers and kick-start real reforms. However, what should be relegated to 'the past' – or what Kenya was in transition from, and what it should be in transition to – as well as how the past is best confronted and addressed, and what various mechanisms could

[3] A scarf or piece of cloth.

realistically achieve, were far less clear even to transitional justice's supporters. At the same time, many Kenyans (including many of the political elite) came to prioritise peace and stability over justice. It is the critique that an analysis of these highly public political processes offers of transitional justice's attempts to establish new temporalities in which the present and future are free of violent and unjust pasts, and the window that such an analysis provides onto Kenyan politics, that constitutes the subject matter of this book.